

November 8, 2010

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Water Docket
Environmental Protection Agency
Mailcode: 28221T
1200 Pennsylvania Ave., NW
Washington, DC 20460

Submitted by Email (vabaytmdl@dc.virginia.gov)

Department of Conservation and Recreation
Commonwealth of Virginia
203 Governor Street
Richmond, VA 23219

Re: EPA Water Docket ID No. EPA-R03-OW-2010-0736, Draft Total Maximum Daily Load (“TMDL”) for the Chesapeake Bay; and Virginia Chesapeake Bay Watershed Implementation Plan (“WIP”)

To Whom It May Concern:

Thank you for the opportunity to comment on EPA’s Draft TMDL for the Chesapeake Bay and Virginia’s WIP.

We own and operate a municipal wastewater treatment plant (“WWTP”) that cleans and discharges highly-treated wastewater within the Chesapeake Bay watershed pursuant to a state-issued National Pollutant Discharge Elimination System (“NPDES”) permit.

We expect to do our part for the Bay restoration. In fact, our WWTP is in the process of being upgraded with nutrient removal technology. Our facility is under the final stages of design and is expected to go to construction in approximately mid 2012. This project is expected to cost approximately \$60 million. To pay for this project, rates will have to be increased. Increases will vary across the five jurisdictions that we serve, but are currently estimated to be in the 75 to 100% range over current rates.

We have significant concerns with EPA’s Draft TMDL and object to EPA’s proposed “backstop” actions against the Commonwealth of Virginia and our facility. EPA proposes to cut our facility’s stringent nutrient wasteload allocations (“WLAs”) currently set forth in Virginia’s EPA-approved Water Quality Management Planning Regulation, 9VAC25-720, and Chesapeake Bay Watershed General Permit Regulation, 9VAC25-820 (collectively, the “Virginia Regulations”).

EPA is considering these potential cuts under a new EPA guidance letter on “reasonable assurance” and EPA’s initial view that Virginia has given inadequate assurance that nonpoint sources (*e.g.*, agricultural sources) will reduce their nutrient loads according to plan. We

disagree with EPA's initial view given Virginia's good track record of achieving nonpoint reductions. We also question whether EPA's unpromulgated reasonable assurance guidance is even legal given that it operates as if EPA's previously proposed but withdrawn reasonable assurance regulation had actually been put into effect.

We strongly oppose EPA's inequitable proposal to transfer more burden to our WWTP and similar point sources. We object to EPA's currently proposed "backstops" (4 mg/L TN and 0.3 mg/L TP at design flow) in lieu of the WLAs in the Virginia Regulations, and we also object to the threatened but not applied "full backstops" that would decrease the concentration basis further (3 mg/L TN and 0.1 mg/L TP at design flow) and even the flow basis to past flow levels (2007 to 2009 average flow rather than design flow).

In addition, as the Chesapeake Bay Program has long ago determined, the James River does not influence mid-Bay water quality and any regulation of James River nutrient discharges should occur only for local water quality protection. Locally, the applicable water quality standard is the chlorophyll standard adopted by Virginia in 2005 and approved by EPA. Since adoption of this standard, the State issued the Virginia Regulations governing WWTPs and local governments designed and constructed the required new facilities with long-term debt, which now must be repaid by the public over the next 20 to 30 years.

At this extremely late point in time, EPA has unilaterally changed the computer model it uses to judge the adequacy of Virginia's actions. Virginia, however, has determined in its WIP (September 2010) at pages 14-15 that the chlorophyll standard is faulty and that "additional scientific study is needed to provide a more precise and scientifically defensible basis for setting final nutrient allocations." We agree with this finding and determination by Virginia, and we also support Virginia's "Four Part James River Strategy" at pages 15-17 of the WIP to address these major technical problems. We strongly support the WIP with regard to its wastewater elements at pages 11-12 (Source Sector Strategy for Wastewater), at pages 14-17 (James River), and pages 38-50 (Section 5: Wastewater).

We understand that the Draft TMDL is fundamentally and materially flawed as a technical matter, especially with regards to the James River components. Serious chlorophyll standard and computer modeling deficiencies are thoroughly documented in the comments of the Virginia Association of Municipal Wastewater Agencies, Inc. ("VAMWA"). We request that EPA fully consider and address all of VAMWA's comments, which we generally support and hereby incorporate by reference as if fully set forth herein.

In closing, what is distinctly missing from EPA's Draft TMDL is any appreciation for the major commitments very recently made by EPA and Virginia (the State's adoption and EPA's approval of the Virginia Regulations in 2005 and 2007) and the major financial commitments that local governments have made to implement those requirements including incurring significant public debt (typically with 20 to 30 year repayment terms) and constructing major new facilities (typically built to last 20 to 30 years). We object to the waste inherent in EPA's proposed override of the Virginia Regulations and Virginia WIP through the Draft TMDL and its elements that relate to our WLAs.

For further information, please contact L. Alan Harrison, P.E., Assistant Executive Director at (804) 861-0111 x202 or via e-mail at aharrison@scwwa.org.

Sincerely,

L. Alan Harrison, P.E.
Assistant Executive Director
South Central Wastewater Authority

c: Mr. Alan Pollock, VA DEQ (alan.pollock@deq.virginia.gov)
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